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JUL 30 2003  
WATER RIGHTS  
SALT LAKE

July 28, 2003

Mr. Kirk Forbush, P.E., Regional Engineer  
Utah Division of Water Rights  
P.O. Box 563  
Richfield, Utah 84701-0563

Re: Your Notice of July 18, 2003

Dear Mr. Forbush:

I am in receipt of your "Notice" as referenced above. This is to notify your Office that we do not believe that we are utilizing in excess of our water rights at all, nor in any respect. I have engaged Sunrise Engineering, Inc. to review our rights and provide maps that address the numerous errors that exist in your analysis whereby you arrived at the contrary conclusion. (Sunrise has previously done survey, flow measurement, and Proof work for us, and has promised me that they will work it in just as soon as possible.) This letter is primarily to allay any concerns that you may have in the meantime.

When I received your agency's approval of our principal Change (a24777) (which was filed July 28, 2000 and approved May 7, 2003) some few days after May 7, 2003, and since the current irrigation season was well underway, I interpreted the language in condition #7 "...submit...a map...upcoming irrigation season.." as a reference to the upcoming, or 2004 irrigation season. I believe I referred to that previously in my letter of May 19, 2003.

After waiting nearly two years for approval (and in the meantime having inquired several times of your Office if you needed a Temporary Change or any additional information to expedite approval) I had preferred to not have to submit maps during this busy season, but your Notice has forced me to drop everything and get them prepared.

Unfortunately, it appears that you have interpreted some language in my May 19 letter as an attempt to hide something, judging by your current Notice. Nothing could be further from the truth, as I will point out.

May I bring to your attention the fact that your Office has on file a Proof, naturally including a Proof Map, for Change a19928 for 333.4 acres, 306 acres of which you have mapped and indicated as overage acres in your Notice, without adding the acreage covered by the right into the list of total water rights available. Perhaps your map and Notice were prepared in haste, as I am certain you will readily admit on examination of the file for a19928 that you have made a substantial error in disregarding this right. (In addition, you have marked the pivot watered by this right as 288 acres, while it was surveyed as 269.437 for the Proof, a difference of over 18.5 acres.)

I have little doubt that, when done accurately, we will also find substantial errors in your estimates for most, if not all, of the other areas you have "mapped"; for instance, every parcel has been counted as a full 40 acres, with no regard to road ROW's, ditches, or other encumbrances. I have in my possession numbers based on NRCS aerial photos that show we are within with our acreage.

You, or whoever on your staff prepared the letter and map you sent, have made an additional error by failing to notice that we have another 180 Sole Source acres in WR# 67-765 that likewise isn't counted in on your list. Perhaps you can be excused in that we have never included this right in any of our Change Applications simply because we didn't need to change its use in any respect.

I keep mentioning Sole Source acreage because we have, in addition, some supplemental acreage, but we have never been able to obtain a clear view of how our Chalk Creek shares supplement our wells, even after meeting with you at length on the subject, on how to handle it, so we haven't put that into the mix, yet.

An additional error: the number 1969 on the map was transposed to 1996 in the letter, a difference of 27 acres. Errors in your letter and map identified so far:

1996 acres instead of 1969	=	27 acres
Proof map pivot 269.437 acres vs		
288 acres on your map	=	18.563 acres
Counting 306 acres covered by		
a19928	=	306 acres
<u>Failure to credit 67-765</u>	=	<u>180 acres</u>
Total in error	=	531.563 acres

So I have accounted for 531.563 of the 658.62 acres your Notice asserts we are overusing, without the benefit of a final map, and I am confident that an accurate map will rectify the remaining 127 acres, which is only 6% of the total acreage involved.

We have done all the numbers before we made these substantial investments in lateral and pivot sprinklers, and we are not exceeding our water rights; *the fact of the matter is that we have gone to considerable effort and expense to determine exactly what our water rights entail, precisely so that we can guarantee that we operate within them.*

A final note: I see that I made reference in my May 19 letter to the utilization of our Chalk Creek rights, and in such a way that it could lead to a misunderstanding on your part. Let me explain what has actually happened this season.

Due to the continuing ambiguity as to how our Chalk Creek and underground rights can interact, combined with the very poor snow-pack conditions in early spring when these decisions had to

be made, we prepared and planted almost none of our acreage that is served solely by surface sources, because we didn't expect to have much surface water. As it turned out, late spring storms brought out a significant quantity of surface water, which we put to Beneficial Use within our delivery system, primarily on our Sole Source underground acreage, since we had very little acreage prepared to put it on. Having made this admission, I hasten to add that we will be certain to Beneficially Use all of our underground rights (as well as surface rights) at least once in every 5 years to make sure you never have grounds to assert some partial forfeiture claim against us.

I have requested that the Chalk Creek Watermaster provide a record of deliveries to us from the Chalk Creek Irrigation Company, and will ask Sunrise to organize this information in an appropriate way in connection with the maps they are preparing.

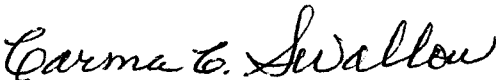
I am of the opinion that this surface water data, together with other information that will be provided, will show that we have and will actually under-utilize our water rights in the 2003 irrigation season.

I can applaud your efforts to stop illegal water withdrawals in view of the current extended severe drought, but we are not in violation.

Sincerely,



Garth J Swallow  
Trustee of Garth J Swallow Revocable Trust  
Manager Member of Swallow Farms, LLC



Carma C. Swallow  
Trustee of Carma C. Swallow Revocable Trust

Cc:	Jerry Olds	State Engineer
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